

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

OP.No. 11471 of 2003(N)

PETITIONER:

A.NILAVARNEESA, SAJITHA TRADERS,
M.PUDUR, GOVINDAPURAM P.O., PALAKKAD DISTRICT.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

1. ADDL.SALES TAX OFFICER-1, CHITTUR.
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES,
PALAKKAD.
3. COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.
4. TAHSILDAR (REVENUE RECOVERY),
CHITTUR.

BY ADV. SHRI.PRADEEP, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 16/11/2007, THE COURT ON 16/11/2007 DELIVERED THE
FOLLOWING:

OP NO. 11471/2003

ORDER ON CMP NO. 19671/2003 IN OP NO. 11471/2003

DISMISSED.

16/11/2007

SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER OF THE 1ST RESPONDENT.

P2 : COPY OF THE ORDER OF THE 2ND RESPONDENT.

P3 : COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

P4 : COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT.

P5 : COPY OF THE OBJECTION FILED BEFORE THE 3RD RESPONDENT.

P6 : COPY OF THE ORDER OF THE 3RD RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 11471 of 2003

Dated, this the 16th day of November, 2007

J U D G M E N T

Petitioner is challenging Ext.P6 order issued by the Commissioner in suo motu revision proceedings restoring the penalty originally levied on the petitioner under Section 45A of the KGST Act, after reversing first revisional authority's order.

2. I heard learned counsel for petitioner and learned Government Pleader.

3. Even though petitioner denied the allegations, I do not think there is any bonafides in the denial because petitioner after detection of suppression, revised the return and remitted the tax pertaining to the suppressed turnover, which is above Rs.18 lakhs. It is seen from the impugned orders that petitioner was engaged in massive suppression of interstate sale of coconut oil from Kerala to outside State and has evaded payment of tax. In fact, as against the interstate sales turn over of Rs. 8 lakhs of coconut oil accounted for the year by petitioner, the Sales Tax Department obtained information from the Tamil Nadu Sales Tax Authorities that the value of the quantity sold during the year was above Rs. 4.7 crores. Obviously, declared turn over is insignificantly low when compared

to the suppressed turn over. Moreover, petitioner after using duplicate copy of delivery notes for transport of coconut oil wrote in the originals of the delivery note that the item transported is rice and paddy. I am convinced that the findings against petitioner is correct and the denial is without any bonafides. Therefore, penalty is rightly levied on the petitioner.

4. The next question to be considered is only with regard to the quantum of penalty payable by the petitioner. This is a case where Deputy Commissioner granted substantial reduction in penalty by reducing it to Rs.1,00,000/- on the ground that petitioner has filed revised returns and paid tax voluntarily after suppression was noticed. Even though, petitioner contested this order also in further revision, learned counsel for petitioner contended that petitioner is entitled relief at least to the extent granted by the Deputy Commissioner. Learned Government Pleader, however, submitted that there was no justification for the Deputy Commissioner to take the massive suppression lightly and reduce the penalty substantially. Even though, I find force in the contention of the learned Government Pleader, I feel levy of maximum penalty sustained by the Commissioner is not correct

because soon after detection of suppression, petitioner paid tax on the suppressed turn over. There is nothing to indicate in the records that after paying the tax petitioner has contested the assessment. In the circumstances, I feel, the admission of liability and payment of tax atleast after detection is a mitigating circumstance, which entitles the petitioner for quantum relief, but not to the extent granted by the Deputy Commissioner. Having regard to the massive suppression, and in the light of the tax paid on the suppressed turn over, this original petition is partly allowed by modifying Exts.P1 to P6 by reducing the penalty to equal the amount of tax.

(C.N.RAMACHANDRAN NAIR, JUDGE.)